

REMARKS

The Examiner has rejected claims 1-7 and 9-10 under 35 U.S.C. §102 as being anticipated by U.S. Patent No. 3,685,176 to Rudy ("Rudy"). The Examiner has also rejected claims 10 and 24 under 35 U.S.C. §103 as being unpatentable over Rudy in view of U.S. Patent No. 2,988,829 to Johnsen ("Johnsen").

Applicant wishes to thank the Examiner for the suggestions he made during the telephone interview on February 12, 2003. Applicant amended the claims to conform to the Examiner's suggestions and, therefore, the claims should be allowable over the cited art.

Applicant's claim 1 requires a vamp of an upper consisting essentially of a single and continuous unit extending laterally across the footwear from a left-most side to a right-most side of the footwear and extending from a toe region to an instep region; a liner positioned beneath the instep portion and consisting of a single and continuous piece; and an elastic instep guard positioned between the instep portion and the liner.

Due to Applicant's single and continuous vamp and liner, the claimed instep protector provides a simpler shoe construction having fewer pieces and more coverage for providing increased protection to the foot over Rudy. Rudy requires additional and more complex pieces in addition to having a split upper and split liner (figures 1 and 6). "The front portions of the collar and foot portion are split..." Col. 3, lines 33-35. Hence, Rudy cannot anticipate Applicant's vamp consisting of a single and continuous unit extending laterally across the footwear from a left-most side to a right-most side of the footwear and extending from a toe region to an instep region because Rudy's upper, in

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the area that extends from the toe to the instep, is split into two pieces and cannot provide the coverage and protection that Applicant's single and continuous unit extending laterally across the footwear provides.


Because all elements of Applicant's claim 1 are not disclosed by Rudy, the rejections should be withdrawn.

The Examiner has rejected claims 10 and 24 under 35 U.S.C. §103(a) as being unpatentable over Rudy in view of U.S. Patent No. 2,988,829 to Johnsen ("Johnsen"). Based on the foregoing amendments and following remarks, Applicant submits that claims 10 and 24 are allowable.

Applicant's claim 24 requires that the elastic instep guard is in direct contact with the steel toe and extends from the steel toe toward the instep portion for providing continuous protection to the foot.

Rudy does not, and the Examiner agrees in his Office Action, disclose, teach, or suggest a steel toe or a guard in direct contact with the steel toe.

Johnsen's guard is not in direct contact with the steel toe, as required by Applicant's claim 24, because insert 35 is between the steel toe and safety pad 30, shown in Johnsen's figure 4. "An insert 35...is interleaved between the metal cap assembly comprising the metal cap 21...an the outer portion assembly comprising...pad 30." Col. 2, lines 35-40. Hence, Johnsen does not teach or suggest an elastic instep guard in direct contact with the steel toe and extending from the steel toe toward the instep portion for providing continuous protection to the foot.



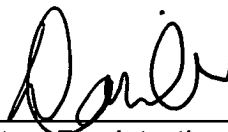
Even a combination of Rudy and Johnsen would not provide Applicant's invention. Instead, one would arrive at an instep protector having a guard between a split upper and a split liner where an insert is placed between the guard and a steel toe. Therefore, Rudy and Johnsen do not render Applicant's invention obvious absent modifications.

Applicant respectfully submits that modifying Rudy or Johnsen to arrive at Applicant's invention would not be proper. Before a modification of a reference can be made in a rejection under 35 U.S.C. §103, some motivation for the artisan to make the modification must be shown. None of the references provide any reason or logic for an elastic instep guard in direct contact with a steel toe and extending from the steel toe toward the instep portion for providing continuous protection to the foot. The person of ordinary skill in the art does not have the current application in front of him/her when considering modifications. Modifying the references to arrive at the claimed invention is even more unlikely given that Rudy teaches that its bladder deflates under pressure and, therefore, cannot possibly be a protective device to resist impact, as Applicant's invention provides. "During skiing operations, however, fore and aft movements of the leg about the ankle joint as a pivot can produce sufficient deformation of the tubes above the ankle..." (col. 6, lines 59-64). Hence, there is no reason why one skilled in the art would modify the prior art to arrive at the claimed invention.

For the foregoing reasons, Applicant respectfully submits that all pending claims are patentable over the references of record.

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Respectfully submitted,



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